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In re Application of:	:	
HORTON	:	DECISION ON PETITION
U.S. Application No.: 10/597,621	:	UNDER 37 CFR 1.181
PCT Application No.: PCT/US2005/002878	:	
Int. Filing Date: 01 Feb 2005	:	
Attorney's Docket No.: 1200403NUS	:	
For: CATHODIC PROTECTION	:	
COMPOUNDS	:	

This decision is in response to the "Refund Request", filed 19 September 2008, and the "Response to Notification of Missing Requirements" filed 14 July 2008.

### **BACKGROUND**

International application no. PCT/US2005/002878 designating the U.S. was filed on 01 February 2005 with an executed declaration of inventorship under PCT Rule 4.17(iv). The international application has a priority date of 04 February 2004. Accordingly, the 30-month deadline for paying the basic national fee expired at midnight of 04 August 2006.

On 01 August 2006, applicant filed a submission to enter the U.S. national phase under 35 U.S.C. 371 including, inter alia, the basic national fee.

On 09 July 2008, a "Notification of Missing Requirements under 35 U.S.C. 371" was mailed to applicant requiring an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and a surcharge fee.

On 14 July 2008, applicant filed a Response together with a copy of the previously filed Rule 4.17(iv) declaration. The Response asserts that no fees are required.

On 18 July 2008, a Notification of Acceptance was mailed according the application a "371" date of 14 July 2008. Applicant was charged a surcharge fee for acceptance of the declaration filed 14 July 2008.

On 19 September 2008, a "Refund Request" was filed.

### DISCUSSION

Initially, it is noted that the Refund Request filed 19 September 2008 has not been signed in accordance with 37 CFR 1.33(b) and, accordingly, will not be treated on the merits. However, the Response filed 14 July 2008, will be treated as a petition under 37 CFR 1.181.

Office records indicate that an executed declaration in compliance with PCT Rule 4.17(iv) was timely submitted in the international phase. Accordingly, the mailing of the Notification of Missing Requirements requiring a new oath or declaration was improper. Further, the "Date of Receipt of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) Requirements" and the "Date of Completion of all 35 U.S.C. 371 Requirements" indicated on the Notification of Acceptance, which was based on the 14 July 2008 resubmission of the Rule 4.17(iv) declaration, is in error and is hereby vacated.

### CONCLUSION

For the above reasons, the petition under 37 CFR 1.181 is **GRANTED**. The Notification of Missing Requirements mailed 09 July 2008 and the Notification of Acceptance mailed 18 July 2008 are hereby **VACATED**.

The application is being forwarded to the National Stage Processing Division for mailing of a corrected Notification of Acceptance and Filing Receipt. The late surcharge and processing fees paid on 14 July 2008 will be refunded in due course.



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